

Comments from Cal/EPA's Environmental Justice Workshops Fall 2004

**Department of Pesticide Regulation Pilot Project Workshop
Fresno
October 12, 2004**

Overview of Cal/EPA Action Plan

Stakeholder Comments

- The comment period should be extended so it doesn't conflict with the holiday season
- Urban pesticide use should be a factor for selecting the community
- Monitor for criteria air pollutants
- Select a community where pesticide drift has been a problem such as Earlimart or Arvin

Department of Pesticide Regulation/Central Valley Pilot Project

Stakeholder Comments

- DPR's pilot project should consider urban pesticide usage (e.g. pesticides use in or at schools)
- DPR's pilot project should focus on areas that have experienced pesticide drift incidences
- DPR's pilot project should consider not just pesticides, but also toxic air contaminants
- How will community involvement take place?
- When considering cumulative impacts, are you going to be looking only at criteria pollutants or will you also consider toxics?
- Recommend looking into ozone and particulate matter
- How are you going to use pesticide usage reports, especially since they do not report every usage?
- How many pesticides could be monitored?

Public Participation

Stakeholder Comments

None

Cumulative Impacts

Stakeholder Comments

- When you select a community for the project, how will cumulative impacts be address if the lead agency is, for example, DPR? How will air, water, toxic, etc. be included?
- Where did staff get the definition they used for USEPA?
- How can multi-media cumulative impacts analysis be conducted where there are problems with even evaluating the cumulative impacts in a single environmental media?

- Will Cal/EPAS adopt the definition of cumulative impacts that is used in the Environmental Justice Advisory Committee's Recommendations Report?
- How are Cal/EPA BDOs going to do cumulative risk reduction studies?
- How will the definition of cumulative impact and precautionary approaches be crafted?
- What steps will Cal/EPA take to make sure that the process is followed, specifically notifying and involving the public?

Air Resources Board Pilot Project Workshop
Diamond Bar
October 19, 2004

Overview of Cal/EPA Action Plan
Stakeholder Comments

- Are precautionary and cumulative components related to pilot projects?
- Focus should be on precaution and cumulative impacts
- Test out ideas and see how they work in the real world
- Focus on resolving problems
- Tools developed need to be formulated so that they can be used in other areas
- Answers may not generalize across the board – they may only be specific to a community
- Communities should not have to compete
- Take advantage of community experience
- Don't restrict applications for pilot projects
- Take advantage of the Cal/EPA EJ Advisory Committee experience
- Community participation should be the most important selection criteria
- Focus on benefits to the community
- Address community needs

Air Resources Board/Southern California Pilot Project
Stakeholder Comments

- How will pilot projects be selected?
- Multimedia issues should be part of selection criteria
- EJ policy development should not be limited to the pilot projects
- Role of advisory committee in action plan and pilot projects not clear
- Use community groups to introduce us into a community
- Need to get multiple perspectives into the selection/design process up front
- Can ARB develop a list of facilities for potential Children's Environmental Risk Reduction Plan (ChERRP) locations to assist communities groups in evaluating locations?
- Can ARB develop a selection criteria checklist?
- Support more than one project
- Pull together work done on communities such as Mira Loma and SB25

- SCAQMD is willing to provide resources to assist so we can do more pilots
- Prejudice should be for taking actions and emission reductions
- Communities already have identified actions that are needed, don't need more data collection
- The Cal/EPA EJ Advisory Committee should play a role in the process
- Take advantage of community knowledge and experience
- A solid emission inventory is an important component of a pilot project

Public Participation

Stakeholder Comments

None

Cumulative Impacts

Stakeholder Comments

- Why are we revisiting cumulative impacts definition?
- Definition approved by overwhelming majority of the Cal/EPA EJ Advisory Committee
- Don't get caught up in definition
- Use definitions developed by the Cal/EPA Advisory Committee as working definitions for the teams and pilot projects.
- Refine definitions based on real-world experience coming out of pilot projects
- Advisory committee recommended a six-month public process on the definitions and this time has already passed

Precautionary Approach

Stakeholder Comments

- Why is definition still an issue?
- The Advisory Committee understood there would be discussion on how to implement precautionary approaches. The definition would be a jumping off place and it would change once the pilot projects are done
- The Advisory Committee's recommendations say conduct a public process to develop a definition
- You won't get consensus on a definition. At some point Cal/EPA is going to have to make a decision
- Should set a deadline for changes to the definition
- Environmental injustice arises from a lack of precaution by decision makers

Department of Toxic Substances Control Pilot Project Workshop
Oakland
October 25, 2004

Overview of Cal/EPA Action Plan

Stakeholder Comments

- How open will Cal/EPA be in working with the community groups? Is it going to be like the same old ways?
- How will the Local Advisory Groups (LAGs) be developed?
- Established groups already exist in Oakland, work with them
- Need some “healing” for the citizens in West Oakland
- We don’t have a General Plan. We don’t have a clean up plan.
- There’s no feedback to the community.
- What are the health impacts from diesel and the traffic in this area? Studies have been done, but we never hear what the results are.
- We need both short and long term plans to identify our issues.
- This effort is about “taking action”. We are in the action stage. We need to stay involved in order to make sure this action continues
- How does the community get involved?
- How are you going to launch this thing?
- How are you going to interact with the poor people?
- An advisory committee has very little power. What good will this committee do? All words – no action

Department of Toxic Substances Control/Northern California Pilot Project

Stakeholder Comments

- DTSC should work with existing groups. No need to create new groups
- Come with education, evaluation, effectiveness, enforcement
- Everyone should have a seat at the table
- Ethical conversations need to take place
- The pilot projects need to be community driven
- Encourage Cal/EPA to look at the particular communities who have already identified projects. They have been out on the front lines
- Can the funds be used for parks?
- Make sure the local government is seating at the table.
- How much power will the local government have in the decision making process? Will this project pilot have local decision makers at the table?

Public Participation

Stakeholder Comments

- There should be a distinction government doing something for us versus us doing something for government
- We need to be conscious about the number of personnel to do everything we need to get done

- Can we collaborate with our resources?
- We need a community vision and pull it all together
- What is needed now is the identification of resources available
- What do you mean by community capacity building?
- The organizations that are left in Oakland – those are the ones that Cal/EPA needs to build capacity building
- We need more than apologies for damage that already has been done
- Put financial support in working together to reach the same goal
- All views need to be heard – whether they like us or not.
- If you are going to do a Brownsville project – are going to look at the AG's office to take legal action for clean up costs?
- Are you also going to look at multi-media?
- Local government is important for land use decisions, but not financial support We need AG's input
- Business is also part of the community. We need to include the businesses
- It is important to know what capacity is
- How will the information obtained be used?
- When you clean up a Brownfield site who are you cleaning it up for?
- Developers, residents, community – who benefits?
- We need to develop economic guidelines so that the right results are achieved
- What will be the impact to the seniors in the area of the pilot project?
- If the results indicate toxics, does that mean the residents get kicked out of their homes?
- How would Cal/EPA address the various questions that will be raised when you meet with the community and they ask – what are you going to do – my child is ill?
- How can we get help and from who?
- Developers are coming to West Oakland and not even looking into the impact to the community. How can this happen?
- We need a new process – the old one isn't working
- We have asthma, we have cancer, we have low incomes
- In terms of pilot projects – what kind of incentives are you looking into or have to get the responsible party involved? Any incentives?
- What will be the collaboration between DTSC and Regional Boards?

Cumulative Impacts

Stakeholder Comments

- The definition of cumulative impact needs to be very clear at the local level
- Whatever the parameters are, everyone needs to know
- We need to include the social-economic impacts of the community. (i.e., medical costs)
- Definition of cumulative impacts needs to include what already exists in addition to what is estimated to occur
- The risks are different depending upon the region

- How are you planning on identifying the “guilty” party when you have more than one facility in close proximity?
- Is Cal/EPA’s resolution that all the parties within this area work together to arrive at a solution?
- Will your agency approach the problem of mitigation?
- Can we work together to bring all the potential businesses/communities together to find potential solutions?

Precautionary Approaches

Stakeholder Comments

- Can you explain to me what precautionary and approach is?
- If you don’t know the caution, how can you create a definition?
- Will you actively be evaluating the effectiveness of the precautionary approaches adopted?
- Absence of risks – is there a way to switch a burden of proof to the businesses to show that there are no risks?

State Water Resources Control Board Pilot Project Workshop Sacramento November 8, 2004

Overview of EJ Action Plan

Stakeholder Comments

- With regards to the acronym SMART- meaningful and responsive should be added.
- Identify other gaps in information other than just data, such as legislative, methodology, participation, etc.
- Lack of public participation: why is this happening? Fiscal issues? Belief process won’t accomplish anything? Recommendation for more meetings.
- Precautionary approach: frustration at the timeline; could learn from what has already been done especially the air districts.

State Water Resources Control Board’s Project/North-Central California

Stakeholder Comments

- Commenter stated that his tribe is not federally recognized by the State of California and with due respect to the environmental justice program, he believes this to be a violation of the policy, as he sees it as a form of discrimination.
- Commenter expressed his disappointment with the lack of participants at the workshop.
- Continue to announce public workshops and rotate meeting times and locations in an effort to gain more community support.
- Consider spelling SMART, an acronym developed for the pilot study, to be amended and spelled SMMARRT. The second “M” would represent

“meaningful” to the community and the “R” would represent “responsive” to community needs. Move at a faster pace in implementing the pilot projects and the Cal/EPA Environmental Justice Program.

- Public trust is very important to California tribes. The Water Board is the agency for tribes in California and trust is a promise that has been broken over the past years.
- A water rights project might be the ultimate vehicle to reestablish trust with the tribes.
- Commenter's tribe is federally recognized and one of the largest tribes in California. However, it is not federally recognized with fishery rights. He expressed deep concern with the lack of water flow in the Shasta River and the impact it has on vegetation and plant growth, salmon spawning, Tribal members' drinking water and bathing and conducting religious rituals.
- There is a great need for more water in the area and encouraged the Water Board to consider this problem as an environmental justice pilot project.
- Commenter supported the Karuk Tribe in being used as a pilot project.
- Commenter shared some precautionary approaches that the City of San Francisco has implemented in pursuing similar projects.
- Why is the Water Board focusing on children's health issues, instead of surface water or bay delta regions?
- How is the Water Board integrating the Environmental Justice Program into permits using the “carrot” and “stick” approach?
- Move forward with the pilot projects, but consider the important precautionary option of ensuring public participation early in the process to minimize harm.
- With budget and resource constraints, people will not be able to attend every meeting, but Cal/EPA should consider scheduling at least a dozen meetings recognizing that if a few attend each meeting and are briefed on the proposed package it will be time well spent.
- Commenter expressed concerns with the proposed time line and the serious impact it will have in 2006. He stated to proceed another two years considering a pollution reduction strategy is very disappointing to him and encouraged the Water Board to move forward at a faster pace.
- There is a need for additional stream flow in the Shasta River to adequately address concerns with salmon spawning, vegetation, Tribal rituals and to grow alfalfa upstream of the Klamath River.
- Focus on the middle/low represented people with serious groundwater and surface water problems.

Department of Pesticide Regulation's Pilot Project

Stakeholder Comments

- Choose an area where pesticide use is high. DPR needs to make maps of the high use areas and needs to present the maps (suggests putting on web site).
- Stakeholders need more help from DPR to determine the high use areas.
- Suggests looking at cotton defoliation season because of defoliant flu, high cotton acreage, and the many defoliants used.
- Air monitoring alone will not hit everything.
- Focus on drinking water, food, ground water, etc.
- Bring existing monitoring data together into a place and format that can be used meaningfully together.
- Data by itself is meaningless. Interpretation of the data and follow up needs to be done.
- Comment: DPR's lack of action to solve problems identified in the data interpretation, lack of mitigation (uses MITC as an example).
- DPR needs to come up with an action plan to reduce pesticide exposure.
- Discouraged with slide #33 that had to do with constraints.
- What does DPR have available for staffing, time, budget, etc.
- What is the timeline for the implementation plan?
- What would be DPR's ideal funding/staffing situation for the project?
- Has DPR determined what this is and what kind of timing for the project is the department looking at?
- Is the defoliant flu issue outside the budget for this project?
- What are our theories?
- Pesticide issues are good examples of an area to approach using the precautionary principle. Opportunity to use the alternatives approach.
- Communities should have a voice in deciding which chemicals are of concern and want studied.
- An alternatives assessment should be done.
- It is necessary to take all alternatives into consideration and let the community voice their opinion on the alternatives.
- DPR will need to determine what type of fix (implementation strategy) should be done, whether it be regulatory, legislative, etc.
- DPR needs to decide on a problem and determine the best way to fix it.
- DPR should target enforcement since it is difficult for EJ communities to get enforcement.
- The EJ communities will need more attention from government since the passage of Prop. 64.
- There is a big disparity in enforcement throughout the state and in different communities.
- DPR should consider pollution prevention.
- Ensure that the pilot project works with local governments in highly hazardous communities.

- Pollution prevention could include training, housecleaning, etc. Suggests focusing the communities and businesses to safer processes that don't use pollutants.
- Confirm that the protocol for the EJ project will state that monitoring for pesticides will be done when the pesticides are actually used.
- Do not only promote a project based on the cotton defoliants.
- The project should focus on a place with known health effects (look toward DHS for additional information).
- Coordinate results with those from DHS's health effects study.
- Commenter provided information on a doctor studying asthma in Fresno and collecting ongoing information from several thousand patients. States that the doctor would be willing to work with DPR.
- Look at health outcomes.

Department of Toxic Substances Control's Pilot Project

Stakeholder Comments

- There are 7,600 tons of mercury moving thru the Sierra Nevada from the mines.
- Many mines are not documented. We need to talk to the tribes about the mercury coming down off the mountains (into the bay.)

Air Resources Board's Pilot Project

Stakeholder Comments

- It is important to have good emissions-inventory for selected site.
- Glad to hear that Air Board has walked street blocks. Walking the blocks identifies the gaps, real-world information that integrates into better into and overall environmental strategy.
- It is particularly important to look at federal sources
- When using models, use real world data not just default assumptions
- Does the Air Board have sites in mind?
- Will other sites with denseness of use/ (rail, water, diesel, etc) be considered?
- Need to choose not only an area that has toxic sources, but an area that has a willing and capable community. This should be very much at the top of your thinking.
- In reference to "walking the streets:" consider other options of your methodology. Random selection or targeted selection of areas to walk – extrapolate a little and cover a larger and more diverse group of sources of pollution
- Federal sources, ports and rail yards are very important
- Should not underestimate issues raised by stationary sources in communities
- Relying upon emissions facts is not as good as actually measuring emissions

- Use real data. Don't just measure operations under ideal conditions. Use real conditions that include start up, shut down and malfunction, (data that doesn't currently exist).

Public Participation and Community Capacity Building

Stakeholder Comments

- Talk about influence on outcomes of decisions. Key criteria of people participating – add to definition “influence on decisions”
- Inventory – missing, an assessment of the agency's capacity to handle Public participation. DTSC is only BDO with division dedicated to public participation. Include in inventory structure of organization, what staff and mgt dedicated to PP specialists and knowledge, training and resources.
- Looking for ideas on how to have meaningful public participation. Look beyond government for examples.
- Consider that there may be less physical participation because we have the opportunity to use the web cast as an information source.
- Regarding meaningful Public Participation: we recommend this meeting as an example. Can be better scheduled at a time when the public can better participate, i.e. after 5 pm or on weekends.
- We also take issue that local government should be the model for meaningful public participation, when local government efforts are often inadequate.
- Use the California Native American Heritage Commission to get contact info for the appropriate tribes in areas doing the projects. Use their services for recognized and non-recognized tribes.
- When you are outreaching to tribes, open your approach. Not all tribes feel they've been involved. Contact us for methods.
- Advisory committee didn't take the chance to educate community about BDO process.
- Influence and meaningful public participation. At each of the public hearings, there is input from many different stakeholders. Bottom line is that someone has to make a decision.
- Helpful for community to know why information was used or not used. Tell them why, or why not, their comment was used.
- DOI (Interior) is proposing a rule that no one except a dam owner can appeal the decisions in a FERC license. Feds have an executive order on environmental justice. New regulation states explicitly that states and tribes can appeal. In terms of Public Participation, what happens when the Feds say people can't be involved, but the state says we must have meaningful efforts? Are the states and feds coordinating together?
- Communities don't participate because they don't believe we're taking real action, especially when they see the feds instituting rules that conflict with state direction.
- What are the next steps for implementing those recommendations across all of the agencies?

- Many communities are quite reluctant to engage in additional processes with governmental agencies for a variety of reasons. I would suggest that the BDOs think carefully about opportunities to take pilot projects to existing community venues, such as faith organizations, local meetings, etc. This could and should be done with the support of local community members, and would likely draw more attention as well as show a respect of community members' own precious time resources.

Cumulative Impacts

Stakeholder Comments

- Impacts are to the people, just not our children. It's all of our people.
- All impacts have a tremendous long term effect. If she had salmon in her diet, my mother would still be here today.
- Energy is just getting started on a project w/ ARB to do an analysis of approach.
- Vulnerability of the people exposed – populations or sub populations. Are they pre-disposed to worse impacts, based on their genetic make-up?
- What is the scope? How do you determine if an area has a disproportionate number of impacts?
- Should non-chemical stressors be a part of our approach? CEEB doesn't think so. We think there's a lack of data and methodology and a lot of speculation. Needs to be science-based.
- What are people being exposed and what are the risks?
- Non-chemical stressors should be included in definition. Include sensitive populations. Add all definitions... just put "ors" between the sentences
- Add category of "base-line issues." Use a baseline of a clean environment. Consider what's "not known" as well as what "is known." For instance: A source located next to a special ed school. What are the toxicological impacts and non-chemicals stressors on special needs children?
- Where does the burden of proof fall? Combined risk of aggregate exposures? Burden falls on the community currently. Make definition least burdensome possible for communities.
- Temptation to rely upon CEQA. Framework people are familiar with. In theory very useful in practice... CEQA doesn't consider baseline of clean environment. Doing alternative analysis isn't as stringent as it should be.
- Criteria to reduce CI: Have we reduced or prevented pollution in a measurable way?
- Are the decisions by BDOs based on cumulative impacts?
- Mercury analysis shows 15% of women have elevated levels of mercury.
- Tribal communities. Maintain spiritual sustenance from eating salmon. Something to think about impacts of raising a dam, which will affect the tribal lands as well as the salmon runs. CEQA should/does address ALL impacts to the environment. Non-chemical stressors, as well as impacts to cultural.

- ATSDR did a very good definition.
- CEQA definition of cumulative impacts is the one the group supports. Well-known concept among government. Cumulative impacts are dealt with by local agencies. If you end up with a different definition that includes non-chemical stressors, etc, how will you reconcile the difference between the local assessment and the State's definition of addressing cumulative impacts?
- Decisions made on a preliminary basis will set the tone down the road. Our organization would support something that is empirically based and applied, so you can determine if the results are replicable.
- Parameters around non-chemical stressors? Where do you differentiate?
- First tribe directly downstream of reservoirs on the Klamath River. Farming going on in Upper Klamath River Basin. Tribes are affected downstream of the agriculture. Herbicides are flowing into the water where people bathe and drink. Suspect that tribal members have been suffering from the impacts all this time. Strong case for cumulative impacts.
- You should address all people, not just children.
- CEC is having initial discussions with ARB regarding multivariate analysis concerning cumulative impacts. It is important to recognize sensitive subpopulations, e.g., those predisposed to illness due to their genetic makeup.
- How do you determine if area has disproportionate number of impacts? SCAQMD definition might apply.
- Nonchemical stressors SHOULD NOT be included due to the lack of data and methodologies; this is a huge task already - adding nonchemical stressors may prolong and complicate the process.
- Non-chemical stressors SHOULD be considered, also sensitive subpopulations. Be more rather than less inclusive.
- Consider where the burden of proof falls – make definition least burdensome for communities.

Precautionary Approaches

Stakeholder Comments

- There are different forms of precaution. Some reasonable. Some extreme. Important for BDOs to use reasonable approach. Additional precaution in some areas make sense.
- Policies that look at benefits should be considered.
- Really want to emphasize the responsibility that comes with being a public trustee. Guidance could come from a case in Hawaii, 2000, 9P.3D.409 Hawaiian Supreme Court Decision. In re Water Permits. Waiahole Ditch combined contested cases, between 468 and 471. Excellent analysis: A Board with trust responsibility cannot be delegate to an umpire calling balls and strikes. Burden should not be on the public to prove there is a hazard. Boards have been created to act with discretion in the public interest before scientific certainty. This idea of scientific proof puts the

EPA in position to do too little too late every time. The PA exerts ahead of time. Has to do with burden of proof. When you have a public trust, it's the private action, who is trying to do something with public resources, who has the burden to demonstrate safety to the Board. Public question is "How many people have to die for you to act?" Words "Public Trust" should be involved with the definition of PA.

- In San Francisco, they struggled to come up with their definition. Take protective action in absence of certainty. How do you do that? Proponents see a press for "more study." Sees CI going down that road. Don't dwell on multiple risk assessment. Don't fall into the mode of not being able to take action until we have proof.
- Focus on alternatives assessment. What is critical: not enough to just look at alternatives; select one that minimizes harm, but includes benefits
- Burden: People don't have to prove safety. As impossible to prove safety as it is to prove harm. There is a burden on the proponent to provide complete and accurate information.
- Trade secrets in pesticides preclude understanding what people are being exposed to.
- When you refer to the need for "all the information" that's just the flip side of the dueling toxicologists... don't say you can make a move until you study the thing over and over. We are looking at the definitions... like the Ocean's version. Would urge Cal/EPA with something that is protective, that accounts for how much information is known.